IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL KNOLL Plaintiff,	:	
	:	CIVIL ACTION
v.	:	NO. 01-2711
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY Defendant.	:	

MEMORANDUM AND ORDER

YOHN, J. September_____, 2002

On June 1, 2001, plaintiff, Michael Knoll, filed suit against defendant, the Southeastern Pennsylvania Transportation Authority ("SEPTA"), alleging that defendant discriminated against him on the basis of a perceived disability in violation of Title I of the Americans with Disabilities Act ("ADA") when it terminated his employment as a transit police officer for failure to meet SEPTA's visual acuity standards. Pending currently before the court is defendant's motion for summary judgment, in which it argues that plaintiff is not disabled within the meaning of the statute, and therefore cannot seek the ADA's protection. Because 1) plaintiff has provided no record evidence to raise a genuine issue of material fact regarding defendant's perception of plaintiff's ability to engage in the major life activities of seeing and working, and 2) plaintiff has failed to meet his burden of providing any evidence that defendant's stated legitimate, non-discriminatory reason for terminating his employment was pretextual, this court finds as a matter of law that plaintiff is not disabled and that defendant's decision to terminate plaintiff's employment did not violate Title I of the ADA. Accordingly, defendant's motion for summary

judgment will be granted.

BACKGROUND

At the heart of this case are SEPTA's annual physical examinations and mandatory visual acuity standards for its transit police officers; consequently, the court begins its discussion of the facts with a basic overview of these uncontested employment policies and plaintiff's medical history.

In order to become and continue to be a transit police officer for SEPTA, an employee must take and pass an annual physical examination. Included in this examination is a test of the individual's visual acuity.[1] SEPTA's visual acuity standards require that officers have 20/20 corrected vision in their best eye and no worse than 20/30 corrected vision in the other. Because the position of transit police officer can be physically taxing and, occasionally, life-threatening, SEPTA requires that officers meet these standards to ensure that they are in excellent health. SEPTA physicians and technicians conduct the examinations and report the results to SEPTA's medical department. Should an officer fail his annual physical, a member of the medical department informs him of his employment disqualification and the officer's employment is then terminated.

In 1983, plaintiff Michael Knoll applied for a job as a transit police officer for SEPTA. Having had several years of security experience in the private sector and having graduated from the Philadelphia Police Academy, Knoll appeared well-qualified for the job. However, he had one drawback: a visual impairment known as amblyopia, more commonly referred to as "lazy

[1] Visual acuity is defined as "clarity of central vision." STEDMAN'S MEDICAL DICTIONARY 20 (5th ed. 1982).

eye."[2] As a result of this condition, for most of his life,[3] the best corrected visual acuity of Knoll's left eye was anywhere between 20/60 and 20/80. (Def. Ex. G; Def. Ex. H; Def. Ex. I, p. 2; Def. Ex. K, p. 182). Through his right eye, however, he could see 20/20 without correction. (Def. Ex. G, Def. Ex. H, Def. Ex. I, p. 2, Def. Ex. K, p. 182). As a consequence of the discrepancy in the visual acuity of his eyes, from an early age Knoll's brain disregarded his inferior eye – so that he would not see double or experience substantially blurred images – thereby resulting in monocular vision, which in turn affected his capacity to gauge depth.[4]

As a result of his impairment, when Knoll first took SEPTA's visual acuity test, he failed. Despite Knoll's protests that eyeglasses have no effect on amblyopia, the SEPTA medical technician conducting the examination told Knoll to visit his own doctor to obtain a prescription. Knoll went to his regular ophthalmologist, who confirmed Knoll's belief that eyeglasses would in no way remedy his condition. However, because Knoll believed he would be unable to obtain

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[2] The American Academy of Ophthalmology defines the condition as "poor vision in an eye that did not develop normal sight during early childhood." American Academy of Ophthalmology, *Amblyopia FAQs, Medem Medical Library at* http://www.medem.com **(Aug. 22, 2002). The National Library of Medicine's on-line medical encyclopedia explains that "[a]mblyopia may be caused by any condition which causes one eye to be favored and the other ignored by the brain: Strabismus (crossed eyes), different refractive errors (farsightedness, nearsightedness, astigmatism) in the two eyes, or childhood cataract are common causes of amblyopia."** ***Medline Plus Health Information at*** http://www.nlm.nih.gov/medlineplus/ency/article/001014.htm. (Aug. 29, 2002). **Any of these conditions will result in "[t]he preferred eye becom[ing] dominant . . . . [However,] the non-favored eye is ignored by the brain, and the visual system in the brain for that eye fails to develop properly."** ***Id.***

[3] Knoll indicated in his deposition that he has had this impairment since before he obtained ten years of age. Def. Ex. K, p. 209.

[4] *See Medline Plus Health Information at* http://www.nlm.nih.gov/medlineplus/ency/article/001014.htm. (Aug. 29, 2002) (stating that reduced depth perception is a common consequence of monocular vision).

employment with SEPTA without glasses,[5] his doctor issued a prescription for corrective lenses. According to Knoll's deposition testimony, the effect of these glasses was comparable to "looking through a glass window." (Def. Ex. K, p. 22). In fact, in the seventeen years since receiving these glasses, Knoll has not received a new prescription and only wears the glasses when taking SEPTA's eye examinations. (Def. Ex. K, p. 22-23). After receiving the eyeglasses, Knoll returned to SEPTA and, remarkably, passed the eye examination despite the fact that every doctor cited in the record stated that corrective lenses do not in any way improve his vision. Indeed, until 1999, Knoll regularly took and passed SEPTA's required annual physicals. SEPTA technicians recorded his corrected vision[6] as 20/20 in his left eye in almost every instance.[7]

Thus, from 1983 until 1999, Knoll served as a SEPTA transit police officer. He received two commendations; one for perfect attendance and the other for assisting in the capture of two robbers. (Def. Ex. K, p. 76-81). Although two citations for minor infractions appear in his file,[8] his overall performance as an officer appears quite good. Additionally, Knoll has stated that he got along well with his supervisors and that he generally enjoyed his job. (Def. Ex. K, p. 81).

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[5] *See* Def. Ex. K, p. 21 ("I said, doctor, you have to give me glasses or I don't have the job.").

[6] While prescriptive eyewear cannot correct Knoll's condition, the court uses the term "corrected vision" simply to indicate that Knoll was wearing his glasses at the time of the referenced examination.

[7] The records of Knoll's 1993 examination state that the corrected visual acuity in Knoll's inferior (left) eye was 20/40. However, the record is unclear as to when exactly SEPTA instituted its current visual acuity standards of 20/30. Thus, it is possible that Knoll's recorded corrected vision of 20/40 in his left eye met the 1993 SEPTA standard.

[8] *See* Def. Ex. K, p. 62-75 (discussing one citation for fighting and one citation for wearing an improper uniform).

In 1999, Knoll once again took SEPTA's required annual physical. This time, however, he failed the eye examination; the test revealed that the corrected visual acuity in his left eye was 20/60, far below the 20/30 requirement. Unlike previous eye examinations, the 1999 examination required Knoll to look into a "scope machine" in addition to reading an eye chart. While the record never satisfactorily details the mechanics of this instrument, it appears to have contained an eye chart consisting of lines of letters decreasing in size from one line to the next, which Knoll was required to read aloud. It was this test that appears to have revealed to SEPTA the poor vision in his inferior eye.

Knoll's complaint alleges that the 1999 examination was flawed because the SEPTA technician conducting the examination was belligerent and made discriminatory comments toward him. Specifically, he claims that the technician was frustrated by the volume of officers whom he had to examine. (Def. Ex. K, p. 136). During Knoll's examination, this technician became so agitated that he began cursing at Knoll, stating that Knoll was "blind as a [expletive] dog" and that he "need[ed] a [expletive] dog for the subway." (Def. Ex. K, p. 136). This technician then recorded Knoll's corrected visual acuity as 20/100 in his inferior eye and 20/50 in his best eye. (Def. Ex. L). According to Knoll, as a result of these outbursts another SEPTA health care provider, Dr. Kathy Gares, entered the examination room and essentially re-examined him. (Def. Ex. K, p. 158). After examining Knoll this second time, Dr. Gares amended his test scores, recording his corrected visual acuity as 20/60 in his inferior eye and 20/25 in his dominant eye. (Def. Ex. L).

It should be noted, however, that Knoll does not dispute that the corrected visual acuity of his inferior eye is no better than 20/60. Soon after his 1999 examination, Knoll visited Dr.

William Sun, who recorded his best corrected vision as 20/60 in his inferior eye. (Def. Ex. G; Def. Ex. K, p. 182). In 2001, Knoll's other ophthalmologist, Dr. Dion Ehrlich, recorded his best corrected vision as being 20/70 in his inferior eye. (Def. Ex. H). Similarly, in 2002, defendant's ophthalmologist, Dr. Grant Liu, recorded his best corrected vision in this eye as being 20/80+. (Def. Ex. I, p.2). Again, Knoll does not contest the validity of any of these findings.

After failing the visual component of his physical, SEPTA discharged Knoll from employment as per SEPTA's standard policy. SEPTA's notice of discharge to Knoll explicitly stated that the reason for his dismissal was "substandard vision." (Def. Ex. R). Since his discharge, Knoll has made modest attempts to seek alternative employment, which resulted in an offer to join the U.N. Peacekeeping mission in Kosovo. Knoll, however, did not accept this job because he hopes to return to his position at SEPTA.

STANDARD OF REVIEW

Either party to a lawsuit may file a motion for summary judgment, and the court will grant it "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." *Ideal Dairy Farms, Inc. v. John Lebatt, LTD.*, 90 F.3d 737, 743 (3d Cir. 1996) (citation omitted). When a court evaluates a motion for summary judgment, "[t]he evidence of the non-movant is to be believed." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Additionally, "all justifiable inferences are to be drawn in [the non-movant's]

favor." *Id*. In addition, "[s]ummary judgment may not be granted . . . if there is a disagreement over what inferences can be reasonably drawn from the facts even if the facts are undisputed." *Ideal Dairy*, 90 F.3d at 744 (citation omitted). However, "an inference based upon a speculation or conjecture does not create a material factual dispute sufficient to defeat entry of summary judgment." *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 382 n.12 (3d Cir. 1990). The nonmovant must show more than "[t]he mere existence of a scintilla of evidence" for elements on which he bears the burden of production. *Anderson*, 477 U.S. at 252. Thus, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citations omitted).

DISCUSSION

The Third Circuit has held that "[i]n order to establish a prima facie case of disparate treatment under the ADA, a plaintiff must show '(1) he is a disabled person within the meaning of the ADA; (2) he is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) he has suffered an otherwise adverse employment decision as a result of discrimination.'" *Shaner v. Synthes (USA)*, 204 F.3d 494, 500 (3d Cir. 2000) (citing *Gaul v. Lucent Techs., Inc.*, 134 F.3d 576, 580 (3d Cir. 1998) and *Deane v. Pocono Med. Ctr.*, 142 F.3d 138, 142 (3d Cir. 1998)).

The court also has "indicated that the burden-shifting framework of *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792 (1973), applies to ADA disparate treatment . . . claims." *Id*. This framework contains three distinct steps. First, plaintiff must establish a prima facie case of discrimination. *Stanziale v. Jargowsky*, 200 F.3d 101, 105 (3d Cir. 2000) (citations omitted). If

plaintiff succeeds in satisfying this prong, the burden of production then shifts to the defendant to "articulate some legitimate, nondiscriminatory reason" for the unfavorable treatment. *McDonnell Douglas*, 411 U.S. at 802; *Keller v. Orix Credit Alliance, Inc.*, 130 F.3d 1101, 1108 (3d Cir. 1997). Finally, should the defendant produce a legitimate, nondiscriminatory reason, the plaintiff can defeat summary judgment only by pointing to some direct or circumstantial evidence from which a factfinder could either reasonably: "(1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." *Simpson v. Kay Jewelers*, 142 F.3d 639, 644 (3d Cir. 1998) (quoting *Fuentes v. Perskie*, 32 F.3d 759, 764 (3d Cir. 1994)).

It should also be noted that despite the shifting of intermediate evidentiary burdens, the ultimate burden of persuading the trier of fact that the employer acted with discriminatory intent remains on the plaintiff. *Barber v. CSX Distrib. Serv.*, 68 F.3d 694, 698 (3d Cir. 1995).

I.

Pursuant to the*McDonnell-Douglas* framework referenced above, the court must first determine whether plaintiff has successfully established sufficient evidence of a prima facie case of disability discrimination under the ADA. In order to do so, a plaintiff must provide evidence that he is a qualified individual with a disability and that a covered entity[9] discriminated against him because of his disability "in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a).

[9] The ADA defines the term "covered entity" as "an employer, employment agency, labor organization, or joint labor-management committee." 42 U.S.C.A. §12111(2). It is undisputed by the parties that defendant was plaintiff's employer, and is thus a covered entity.

The ADA defines a qualified individual as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). Under the act, one suffers from a disability if he has "[1)]a physical or mental impairment that substantially limits one or more of the major life activities of such an individual, [2)]a record of such an impairment; or [3) has been] regarded as having such an impairment." 42 U.S.C. § 12102(2).

The Equal Employment Opportunity Commission ("EEOC") defines[10] "substantially limits" as being "unable to perform a major life activity that the average person in the general population can perform, or significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity." 29 C.F.R. § 1630.2 (j)(1)(i-ii). It further defines "major life activities" as "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." *Id*. at §1630.2 (i).

Plaintiff in this case alleges that he falls within the statute's third definition of disabled. In support of his claim, he makes two very similar arguments: 1) that defendant regarded him as being substantially limited in the major life activity of seeing; and 2) that defendant regarded him as being substantially limited in the major life activity of working. The court will examine each argument in turn.

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[10] Since the statute does not define "substantially limits one or more of the major life activities," the courts seeks instruction from the EEOC guidelines, which are entitled to substantial deference. *See Deane v. Pocono Medical Center*, 142 F.3d 138, 143 n.4 (3d Cir. 1998) (*en banc*) (relying on EEOC guidelines for similar purposes and according them identical deference pursuant to the *Chevron* doctrine).

A.

Plaintiff's first argument in support of his claim that he is disabled is that defendant regarded his impairment as substantially interfering with his ability to see.[11] Plaintiff's sole evidence supporting this claim is that defendant fired him, despite seventeen years of satisfactory service, for failing its eye examination in that his left eye did not meet its 20/30 corrected visual acuity standard. Therefore, the court must determine whether defendant's decision to terminate plaintiff's employment for failure to meet certain medical standards demonstrates that it regarded him as being disabled.

The EEOC guidelines define "regarded as having such an impairment" as having either 1) "a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation" or 2) "a physical or mental impairment

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[11] Plaintiff does not claim that he suffers from an actually disability under the first prong of the ADA definition of disabled. In fact, plaintiff concedes that his impairment in no way disables him. Consequently, the court notes that, according to the record established by plaintiff, a claim of actual disability would lack merit in this particular case.

The Supreme Court has specifically held that monocularity is not a per se disability. *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 566 (1999). Like plaintiff in this case, the plaintiff in *Kirkingburg* suffered from amblyopia and was subsequently fired from his job as a truck driver for failing to meet Department of Transportation visual acuity standards. In reinstating the district court's grant of summary judgment in favor of the defendant employer, the Court began its discussion by stating that the ADA requires the court "to determine the existence of disabilities on a case-by-case basis." *Id*. Immediately thereafter, the Court held that "[w]hile some impairments may invariably cause a substantial limitation of a major life activity, we cannot say that monocularity does." *Id*. After listing the variables that can affect the serverity of one's monocularity, the Court concluded that "these variables are not the stuff of a per se rule" and "monocular individuals, like others claiming the Act's protection, [must] prove a disability by offering evidence that the extent of the limitation in terms of their own experience, as in loss of depth perception and visual field, is substantial." *Id*. at 567.

Plaintiff has expressly stated in his depositions and responses to interrogatories that his condition in no way impairs his ability to engage in any daily or work-related activity or hobby. (Def. Ex. O). Moreover, plaintiff has repeatedly stated that he is not disabled, a statement which defendant does not refute. (Def. Ex. O; Def. Ex. K, p.111).

that substantially limits major life activities only as a result of the attitudes of others toward such an impairment." 29 CFR §1630.2(l)(1-2). Based on this definition, our Court of Appeals explicitly recognizes two circumstances in which an employer regards an employee as being disabled. The first occurs when an employer makes "an innocent misperception based on nothing more than a simple mistake of fact as to the severity, or even the very existence, of an individual's impairment," *Deane v. Pocono Medical Center*, 142 F.3d 138, 144 (3d Cir. 1998) (en banc); *see also Taylor v. Pathmark Stores, Inc.*, 177 F.3d 180 (3d Cir. 1999) (holding that an employer's perception of plaintiff's disability could be based on legitimate yet inaccurate medical information and nonetheless subject the employer to liability). The second circumstance occurs when an employer's action is predicated largely on "society's myths, fears, stereotypes, and prejudices with respect to the disabled." *Deane*, 142 F.3d at 144; *see also School Bd. of Nassau Cty. v. Arline*, 480 U.S. 273 (1987) (holding that simply because an individual suffers from a contagious disease does not automatically justify denying her employment). The court of appeals, however, has also specifically held that an employer does not fall into either category simply by requiring an employee to take and pass a physical examination. *Tice v. Centre Area Transportation Authority (CATA)*, 247 F.3d 506, 508-09 (3d Cir. 2001).

In *Tice v. Centre Area Transportation Authority (CATA)*, the plaintiff, a bus driver for CATA, claimed that the defendant regarded him as disabled because it required him to take an independent medical examination prior to returning to work after suffering a back injury. CATA had never before or since required another employee to meet such a requirement. The Third Circuit, in upholding the district court's grant of summary judgment in favor of the defendant, reasoned that since the ADA "expressly allows examinations or inquires as to whether an

employee has a disability or as to the severity of the disability, if such examinations/inquiries are job-related and consistent with business necessity," plaintiff cannot infer from defendant's use of these examinations that they perceive him as being disabled. *Id.* at 514-515 (citing 42 U.S.C. §12112(d)(4)(A)). In short, the court held that "an employer's request for a medical examination, standing alone, is not sufficient to establish that the employer 'regarded' the employee as disabled, and thus cannot itself form the basis for establishing membership in the protected class under the ADA." *Id.* at 508-09.

In this case, plaintiff has not provided sufficient evidence to permit a reasonable fact-finder to conclude that defendant based its decision to fire plaintiff on either a mistaken or a stereotypical understanding of his impairment. The undisputed record clearly indicates that defendant is correct in its belief that people with amblyopia do not have identical vision to those without the impairment. Dr. Dion Enrlich, plaintiff's own ophthalmologist, stated in his deposition that amblyopia affects stereoscopic vision.[12] *See* Pl. Ex. E, p.24 ("If you have a person who suddenly loses their vision in one eye, it greatly affects their stereoscopic vision because they're not used to the visual clues to determine depth."); Def. Ex. S, p.35 (stating that while people with amblyopia can develop depth perception based on visual cues, "it's not the same type of stereoscopic vision than [sic] a two eyed person would have").

Additionally, the uncontested record reflects the fact that defendant did not presume that plaintiff's vision was flawed simply by observing his lazy eye. Rather, defendant tested plaintiff's vision, which revealed that it was in fact impaired. Moreover, there is no dispute

[12] Stereoscopic vision is defined as "the perception of two images as one by means of fusing the impressions on both retinas." STEDMAN'S MEDICAL DICTIONARY 1566 (5th ed. 1982).

about the extent to which plaintiff's condition impairs his vision. Dr. Grant Liu evaluated plaintiff's vision and determined that the corrected visual acuity of his left eye was 20/80+ and that his impairment affects his stereoscopic vision.[13] (Pl. Ex. I; Def. Ex. I.). Dr. William Sun also examined plaintiff and recorded his best corrected vision as 20/60 in his inferior eye. (Def. Ex. G; Def. Ex. K, p. 182). Finally, Dr. Dion Ehrlich evaluated plaintiff's best corrected vision as being 20/70 in his inferior eye. (Def. Ex. H). Plaintiff does not even allege, much less offer evidence to demonstrate, that this information is inaccurate.

Moreover, unlike the fact pattern of *Tice*, there is not even an inference in the record that defendant was holding plaintiff to a different, let alone higher, standard than any other SEPTA transit police officer. Defendant required all transit police officers to take and pass physicals and eye examinations, (Pl. Ex. A, p.130; Def. Ex. K, p. 130), and plaintiff does not contest defendant's expert testimony that "SEPTA's visual acuity requirements are entirely consistent with the visual acuity standards for many other law enforcement agencies." (Def. Ex. E, p.1).

Additionally, there is no evidence in the record that plaintiff's supervisors or colleagues thought any less of him or treated him any differently than they would an unimpaired SEPTA transit police officer. Plaintiff was given assignments that were identical to those given to his peers. Plaintiff stated in his deposition that he was assigned a partner for the first few years of his service, as were all new officers. *See* Def. Ex. K, p.41-42 (characterizing defendant's "standard policy" as partners generally patrolling their assigned stations together within the first

[13] With regard to stereoscopic vision, the report specifically states that plaintiff was "not able to stereo the fly, animals, or dots." (Pl. Ex. I; Def. Ex. I). This refers to plaintiff's inability to adequately complete a standard optical test which evaluates stereoscopic vision or depth perception.

few years of their duty). He was responsible for patrolling the same number of stations as were his peers. *See* Def. Ex. K, p. 44 (discussing his assignments without ever mentioning any discrepancy). None of his superiors or fellow officers ever disparaged him because of his impairment. (Def. Ex. K, p. 81-82). Indeed, plaintiff states unequivocally in his deposition that he got along well with his supervisors and that he believed he was being disqualified *only* for failing to meet the visual acuity standard. (Def. Ex. K, p. 217-219). According to plaintiff, his supervisors were even "upset" by his firing. (Def. Ex. K, p. 82). In short, until terminating his employment, defendant's employees barely seemed to take notice of plaintiff's impairment, let alone discriminate against him because of it.

Finally, the court cannot glean from the record any disagreement between the parties regarding the legitimacy of defendant's visual acuity standards. Both parties agree that these standards are generally job-related and serve a business necessity. Defendant states that "[o]bservation, which includes stake-outs, and processing visual information on routine patrols . . . are highly dependant upon the use [of vision]." (Def. Ex. C, p. 4-6). Furthermore, vision is imperative to "defending one's self or others from attack, direct pursuit of fleeing felons, subduing individuals who are resisting arrest, high-speed chases, responding to emergencies in poorly lit conditions and use of deadly force." (Def. Ex. C, p. 4-6). With regard to stereoscopic vision specifically, defendant claims (and plaintiff does not contest) that an "officer must be capable of quickly focusing from near to far and back again," presumably to best perform those previously listed necessary tasks. (Def. Ex. C, p. 4-12). Plaintiff has offered no evidence to contradict any of these statements. In fact, during his deposition, plaintiff agreed that defendant "has a legitimate reason to be able to ensure that their officers see well" and that "seeing is an

important part of the job." (Def. Ex. K, p. 132).

Moreover, as defendant's expert witness explains, "SEPTA officers are faced with a wide variety of visual conditions, including low lighting, shadows, and cluttered and busy environments. Pursuit and providing rapid backup support are activities that SEPTA officers routinely perform under these conditions." (Def. Ex. D, p. 2). In his deposition testimony, plaintiff himself described the average station he patrolled as being approximately forty to sixty yards in length and containing "dark areas." (Def. Ex. K, p. 50, 51). Furthermore, plaintiff has offered no evidence to contradict defendant's expert witness' statements that those who, like plaintiff, suffer from a diminished capacity to sense depth are at "an increased safety risk during pursuits because stairsteps and uneven terrains may not be accurately detected visually." (Def. Ex. D, p. 3).

In sum, simply requiring plaintiff to take and pass a visual examination alone in no way demonstrates that defendant regarded plaintiff's impairment as substantially interfering with his ability to see.

B.

Plaintiff's second argument in support of his claim that he is disabled closely parallels his first. Simply, he argues that by firing him despite seventeen years of satisfactory service, defendant regarded his amblyopia as substantially interfering with the major life activity of working. Therefore, the issue for the court to resolve is simply whether defendant's determination that plaintiff was unqualified to perform his job evidences its belief that he is disabled.

In examining a strikingly similar claim to that of plaintiff's, the Supreme Court held that "[w]hen the major life activity under consideration is that of working, the statutory phrase 'substantially limits' requires, at a minimum, that plaintiffs allege they are unable to work in a broad class of jobs." *Sutton v. United Airline*, 527 U.S. 471, 491 (1999). The Court further ruled that in order to "be substantially limited in the major life activity of working, then, one must be precluded from more than one type of job, specialized job, or particular job of choice. If jobs utilizing an individual's skills (but perhaps not his or her unique talents) are available, one is not precluded from a substantial class of jobs. Similarly, if a host of different jobs are available, one is not precluded from a broad range of jobs." *Id*. at 492;*see also Murphy v. United Parcel Service, Inc.*, 527 U.S. 516, 524 (1999) (holding that "evidence that petitioner is regarded as unable to meet the DOT regulations is not sufficient to create a genuine issue of material fact as to whether petitioner is regarded as unable to perform a class of jobs utilizing his skills"); *Tice*, 247 F.3d at 514 ("[I]f the individual is attempting to establish that the employer believed the individual to be limited in the life activity of 'working,' then 'working' must encompass a broad class of jobs.").

In *Sutton v. United Airline*, two severely myopic twins applied for positions as global airline pilots with United Airlines. Although the sisters were capable pilots with experience, United refused to hire them. The sisters brought suit, alleging, *inter alia*, that United's decision violated Title I of the ADA since it was based on United's misperception that the sisters' visual impairments substantially interfered with their ability to work. The Court held that "[b]ecause the position of global airline pilot is a single job, this allegation does not support the claim that respondent regards petitioners as having a substantially limiting impairment." *Id*. at 493. In

short, the sisters had no claim because an employer "is free to decide that some limiting, but not *substantially* limiting, impairments make individuals less than ideally suited for a job." *Sutton*, 527 U.S. at 491 (original emphasis).

There can be no doubt that defendant, like United Airlines, believed that those who fail to meet its visual acuity standards are not fit to be SEPTA transit police officers. However, the Court has determined that plaintiff must provide evidence that he is unable to perform (or perceived as unable to perform) a broad range of jobs. Plaintiff has clearly not done so. Indeed, the undisputed record reveals that not only can plaintiff obtain other jobs, but that he currently has a job offer from the United Nations to be a U.N. Peacekeeper in Kosovo, which he has not accepted only because he hopes that he will succeed in this lawsuit and be reinstated at SEPTA. (Pl. Ex. A, p.87 & 88; Def. Ex. K, p. 87 & 88). Plaintiff also stated in his deposition that several local employers believed him to be a qualified applicant for their offered positions, but they wanted some assurance that he would not be reinstated with defendant prior to offering him a job. (Def. Ex. K, p. 95 & 99). In fact, it appears from his deposition that he was explicitly informing these potential employers that he was still employed by defendant. *See* Def. Ex. K, p. 101 (referring to a potential employer's comment that his résumé stated that he was still so employed). Additionally, as noted by defendant's vocational expert, there are a host of jobs outside the field of security and within the local job market for which plaintiff is qualified (Def. Ex. T, p. 3), a fact which plaintiff does not dispute.

In sum, since plaintiff's impairment in no way precludes him from a broad range of jobs, as a matter of law, it cannot substantially interfere with the major life activity of working.

II.

Even if plaintiff had successfully established that defendant regarded him as having a disability and had further developed the elements of his prima facie case, he has failed to provide any legally relevant evidence that defendant's legitimate non-discriminatory reason for terminating his employment was pretextual.

As stated previously, the second prong of the *McDonnell-Douglas* framework states that after a plaintiff has "established a prima facie case, the burden of production shifts to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection." *Walton v. Mental Health Ass'n. of Southeastern Pennsylvania*, 168 F.3d 661, 668 (3d Cir. 1999) (citations omitted). Defendant employer may "satisf[y] its burden of production by introducing evidence which, taken as true, would permit the conclusion that there was a nondiscriminatory reason for the unfavorable employment decision." *Fuentes v. Perskie*, 32 F.3d 759, 763 (3d Cir. 1994) (citing *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 509 (1993)). Our Court of Appeals has remarked that this is a "relatively light burden." *Id*.

As discussed in the prior section, defendant has articulated several undisputed, legitimate, non-discriminatory, business reasons for having visual acuity standards and for firing plaintiff as a result of his failure to satisfy them. *See supra* Discussion Part IA.

Consequently, pursuant to the third and final *McDonnell-Douglas* prong, in order for plaintiff to survive summary judgment, he must "point to some evidence, direct or circumstantial, from which a fact finder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than

not a motivating or determinative cause of the employer's action." *Id*. (citations omitted). In other words, plaintiff can "survive summary judgment, without direct evidence, by producing sufficient evidence to raise a genuine issue of fact as to whether the employer's proffered reasons were not its true reasons for the challenged employment action." *Id.* (citing *Sheridan v. E.I. DuPont de Nemours and Co.*, 100 F.3d 1061, 1067 (3d Cir.1996) **(en banc)). The Supreme Court and our Court of Appeals, however, also have held that while "a firing . . . may be wrongful in one sense (to purposefully avoid paying benefits, for example), [it] is not necessarily wrongful under the ADEA (or . . . the ADA) 'unless the protected trait actually motivates the employer's decision.'" *Id.* at 669 (citing *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610, 611-12 (1993)).**

In the present case, plaintiff's only argument regarding pretext is that defendant fired him not because of his inability to pass an eye examination, but rather to avoid paying his pension. *See* Pl. Ex. G, p. 55 (stating that plaintiff communicated to a SEPTA psychologist his belief that defendant fired plaintiff in order to avoid giving him his full benefits). While this may be an inappropriate and arguably immoral reason for firing an employee if it occurred, his unsubstantiated belief alone is not enough to raise more than a "scintilla" of evidence that defendant's expressed reason for firing plaintiff was a pretext for discrimination. In short, it is not enough to meet plaintiff's burden.

Conclusion

In sum, because plaintiff is not disabled, he has failed to establish a prima facie case under the ADA. Moreover, even if he had succeeded in that endeavor, defendant has a

legitimate, non-discriminatory, business reason for firing plaintiff, which plaintiff is unable to rebut with any evidence that defendant's proffered reason is pretextual. For these reasons, defendant's summary judgment motion will be granted. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL KNOLL **Plaintiff,**	:	
v.	:	**CIVIL ACTION** **NO. 01-2711**
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY **Defendant.**	:	

Order

And now, this _____ day of September, 2002, upon consideration of the defendant's motion for summary judgment and the attached appendix (Doc. # 11), the plaintiff's opposition (Doc. # 12), and the parties' uncontested statements of material fact and responses thereto (Docs. 1, 5) it is hereby ORDERED that the defendant's motion is GRANTED. Judgment is ENTERED in favor of defendant Southeastern Pennsylvania Transportation Authority and against plaintiff Michael Knolls.

_____

William H. Yohn, Jr., Judge